

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MM Docket No. 98-88
FM Broadcast Stations.)	RM-9285
(Wright and Clearmont, Wyoming) ¹)	RM-9654

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 26, 2000;

Released: August 4, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rule Making*, 13 FCC Rcd 11947 (1998), issued at the request of Mountain Tower Broadcasting ("petitioner"), proposing the allotment of Channels 268C at Wright, Wyoming, as the community's first local aural transmission service (RM-9285). Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. Comments and a counterproposal were filed by Mount Rushmore Broadcasting, Inc. ("Mount Rushmore") proposing the allotment of Channel 268A at Wright and Clearmont, Wyoming, as each community's first local aural transmission service (RM-9654).² Reply comments were filed by Bethesda Christian Broadcasting, Inc. ("Bethesda"), licensee of Station KLMP(FM), Channel 250C1, Rapid City, South Dakota.³

¹ The community of Clearmont, Wyoming, has been added to the caption.

² The counterproposal was placed on Public Notice on June 9, 1999 (Report No. 2336), RM-9654.

Mount Rushmore also includes a proposal to institute a proceeding to reevaluate the Commission's FM allotment priorities, claiming that the current allotment scheme discriminates against minorities. Such a proposal is not appropriately filed in an adjudicatory proceeding such as this and will not be considered further. Mount Rushmore's alternative proposal to allot Channel 268A at Wright and Clearmont, Wyoming will be considered.

³ In its reply comments, Bethesda proposes the substitution of Channel 250C for Channel 250C1 at Rapid City, South Dakota. To accommodate the upgrade, Bethesda also proposes the substitution of Channel 287A for Channel 249A at Gillette, Wyoming, and the substitution of Channel 258A for proposed Channel 268A at Wright, Wyoming. A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made. See e.g., Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments, 5 FCC Rcd 931 (1990). Specifically, the proposed upgrade to Channel 250C at Rapid City is not mutually exclusive to the proposed allotment of Channel 268C at Wright, Wyoming, albeit Bethesda proposes the allotment of Channel 258A in lieu of Channel 268A requested in Mount Rushmore's counterproposal. Moreover, if the proposal was deemed to be a counterproposal, as stated in the Notice, counterproposals are to be advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. See 1.420(d) of the Commission's Rules. Accordingly, Bethesda's proposal will not be considered in the context of this proceeding.

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2. As stated in the Notice, petitioner states that Wright is located in Campbell County (population 29,370)⁴ and has a population of 1,236 persons. Petitioner further states that the allotment would provide Wright with an outlet for local self-expression. Health and safety for the community be increased due to having a local communication outlet for warning the community of emergency conditions caused by severe weather or other health hazards. Moreover, Mount Rushmore states Wright is an incorporated community and has its own mayor, town council, chamber of commerce, and town hall. Wright also has two schools, a public library, a bank, a motel, six churches, three restaurants, a bowling alley, a golf course, several social and civic organizations, and approximately 20 other businesses.

3. In support of its Clearmont allotment, Mount Rushmore states that Clearmont is an incorporated in a rural area and has a population of 119 persons. Clearmont is governed by an elected mayor and four council members. It has its own town hall, post office, and a zip code. The community also has a school, a church, a public library, as well as a restaurant and bar, a grocery store, and two social organizations. Mount Rushmore states its intention to apply for both Class A channels at Wright and Clearmont, if allotted.

4. As an initial matter, we find that both Wright and Clearmont are “communities” for allotment purposes. As such, each community is deserving of a first local aural transmission service triggering priority (3). Generally, conflicting proposals are considered on a comparative basis consistent with the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).⁵ However, our staff has found alternate Class A channels for both Wright and Clearmont and a comparison is no longer necessary. Therefore, we find that the public interest would best be served by allotting Channels 268C and 287A at Wright, Wyoming, as the community’s first and second local aural transmission services. Additionally, we allot Channel 287A at Clearmont, Wyoming, as the community’s first local aural transmission service.

Technical Summary

5. An engineering analysis has determined that Channel 268C can be allotted to Wright in compliance with the Commission’s minimum distance separation requirements without the imposition of a site restriction;⁶ and Channel 287A also can be allotted to Wright at city reference coordinates.⁷

⁴ All population figures are taken from the 1990 U.S. Census.

⁵ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service, and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

⁶ The coordinates for Channel 268C at Wright are 43-45-02 North Latitude and 105-29-53 West Longitude.

We note that these reference coordinates are different from those proposed in the Notice since a construction permit was issued for Station KDNO(FM), Channel 269C1, Thermopolis, Wyoming, at reference coordinates 43-27-33 NL and 108-11-56 WL, eliminating the need for the site restriction required for the original reference coordinates for Channel 268C at Wright, Wyoming.

⁷ The coordinates for Channel 287A at Wright are 43-44-49 North Latitude and 105-28-12 West Longitude.

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Additionally, Channel 287A can be allotted to Clearmont in compliance with the Commission's minimum distance separation requirements at city reference coordinates.⁸

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 18, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Wright, Wyoming	268C, 287A
Clearmont, Wyoming	287A

7. Filing windows for Channels 268C and 287A at Wright, Wyoming, and Channel 287A at Clearmont, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁸ The coordinates for Channel 287A at Clearmont are 44-38-18 North Latitude and 106-22-48 West Longitude.